IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

SA.No. 355 of 2002(A)

AS.78/1999 of ADDL.D.C.,ALAPPUZHA.
OS.17/1988 of SUB COURT, CHERTHALA

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APPELLANTS/ APPELLANTS/DEFENDANTS 1,2,5 AND 6

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1. RADHAKRISHNAN, S/O.PADMANABHAN,
   CHAYAPARAMBIL, UZHUVAMURI,VAYALAR MEKKU VILLAGE.

2. BHANUMATHY AMMA,D/O.MADHAVI AMMA,
   CHAYAPARAMBIL,UZHUVAMURI,VAYALAR MEKKU VILLAGE

3. PADMANABHAN RENGANATHAN BABU,
   CHAYAPARAMBIL,VAYALAR MEKKU VILLAGE.

4. CHINDUMONI,D/O.BHANUMATHY AMMA,
   CHAYAPARAMBIL,VAYALAR MEKKU VILLAGE.

IT IS RECORDED THAT THE 2ND APPELLANT DIED AND THAT APPELLANTS 1,3,4 AND RESPONDENTS 2 AND 3 WHO ARE HER CHILDREN ARE THE LEGAL REPRESENTATIVES AND THAT NO FURTHER IMPLEADMENT IS NECESSARY(AS PER ORDER DATED 25/3/06 VIDE MEMO CF 5175/05)

BY ADV. SRI.C.S.MANU

RESPONDENTS: RESPONDENTS/PLAINTIFFS & DEFENDANTS 3,4,7&9 TO 7

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1. RAJAPPAN, S/O.KRISHNAN,THAYIL VEETTIL,
   C.M.C. ALAPPUZHA FROM THARAVELIYIL,CHERTHALA,
   KIZHAKKUM MURI,KOKKOTHAMANGALAM VILLAGE. (DIED)

2. SNEHALATHA D/O. BHANUMATHI AMMA,

HOUSE NO.XXVII, COIMBATORE, CHAYAPARAMBIL,
UZHUVA MURI, VAYALAR MEKKU VILLAGE.

3. PRABHAVATHY D/O.BHANUMATHY AMMA,
VELIKKAKATHU KADAKKARAPPALLY MURI,VAYALAR MEKKU
VILLAGE, CHERTHALA.

4. P.RAVINDRAN, KUNNATHARA NIKARTHIL,
NIKARTHIL,UZHUVA MURI,VAYALAR MEKKU VILLAGE.

5. SOMAN S/O.PADMANABHAN RESIDING AT
CHIRAYIL,VAYALAR MEKKU VILLAGE,UZHUVA MURI.

6. D.ANILKUMAR,RESIDING AT KANDATHIL,
VAYALAR MEKKU VILLAGE,UZHUVA MURI.

7. CHERUKKAPPAN S/O.GOVINDAN PUTHEZHATHU,
VAYALAR MEKKU VILLAGE.

8. USHA, W/O.CHERUKKAPPAN PUTHEZHATHU,
VAYALAR MEKKU VILLAGE.

9. INDIAN NATIONAL CONGRESS (I),
KADAKKARAPPILLY MANDALAM REPRESENTED BY
ITS PRESIDENT.

10. C.A.GEORGE, RESIDING AT VEESANKATTU,
UZHUVA MURI, VAYALAR MEKKU VILLAGE.

11. JOY, RESIDING AT VEESANKATTU,
UZHUVA MURI, VAYALAR MEKKU VILLAGE.

12. PAPPACHAN, RESIDING AT VEESANKATTU,
UZHUVA MURI, VAYALAR MEKKU VILLAGE.

13. THANKEY SERVICE CO-OPERATIVE BANK LTD,
NO.1003, RPRESENTED BY ITS SECRETARY.

(ADDL.RESPONDENTS 14 TO 16 ARE IMPLEADED AS THE LEGAL
REPRESENTATIVES OF THE DECEASED 1ST RESPONDENT
AS PER ORDER DATED 5/8/05 IN I.A.IA.1447/05)

ADDL.R14 MANI, WIDOW OF THE LATE RAJAPPAN, THAYIL
VEETTIL, CMC ALAPPUZHA, FROM THARAVELIYIL CHERTHALA
KIZHAKKUM MURI, KOKKOTHAMANGALAM VILLAGE

ADDL.R15 JOLLY, D/O.LATE RAJAPPAN THAYIL VEETTIL,
CMC ALAPPUZHA FROM THARAVELIYIL CHERTHALA
KIZHAKKUM MURI, KOKKOTHAMANGALAM VILLAGE

ADDL.R16 GIRESH, S/O. THE LATE RAJAPPAN THAYILVEETTIL, CMC ALAPPUZHA FROM THARAVELIYIL CHERTHALA, KIZHAKKUM MURI, KOKKOTHAMANGALAM VILLAGE

BY ADV. SRI.G.GOPAKUMAR (TVM)
SRI.RASHEED C.NOORANAD

THIS SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO.355 OF 2002

Dated 6th March 2007

J U D G M E N T

Defendants 1,2,5 and 6 in O.S.17/88 on the file of Sub court, Cherthala are appellants. First respondent is plaintiff and other respondents are defendants. On the death of second appellant, appellants 1, 3 and 4 and respondents 2 and 3 are recorded as her legal heirs. On the death of first respondent, respondents 14 to 16 are impleaded as his legal heirs. First respondent instituted suit seeking a decree for declaration that the will executed by Padmanabhan and documents executed by defendants 1 to 6 are void ab initio and for partition and separation of his share. Property admittedly originally belonged to Vava. Krishnan and Padmanabhan are the children of Vava. First respondent is son of Krishnan. Second defendant was the widow. Defendants 1 and 3 to 8 are children of Padmanabhan. According to first respondent as per Ext.A1 sale deed dated 28/4/1961 Vava assigned his right over plaint schedule property in

favour of first defendant and plaintiff and he is therefore entitled to seek partition and get his share separated. It was contended that Padmanabhan being brother of his father was looking after his property for and on behalf of plaintiff also first defendant and Padmanabhan executed will No.4/1974 of Cherthala Sub Registry and bequeathed plaint schedule property as if the property belongs to him and Padmanabhan had no right to bequeath the plaint property as he has no right over it and defendants 1 to 4 have created documents in respect of portions of the property over which they have no right. Plaintiffs sought declaration and partition of the plaint schedule property. Defendants 1 to 3 and 5 to 7 and 9 in their joint written statement contended that plaint schedule property originally belonged to Vava and on 19/2/1959 Vava executed a lease deed in respect of the plaint schedule property in favour of Padmanabhan and since then Padmanabhan has been in possession of the property and Padmanabhan is entitled to fixity of tenure as provided under Kerala Land Reforms Act. It was also contended that K.Govindan and Kavunkal Pappy had kudikidappu rights over the properties and hence 10

cents each were given to them and padmanabhan also allowed defendants 7 to 17 to construct a shed in portions of the property for the purpose of conducting business on executing rent deeds and under Ext.A1 the venders were not in possession of the property and plaintiff is not entitled to claim any share in the plaint schedule property.

2. Learned Sub Judge framed the necessary issues. As question of tenancy claimed by defendants arises for consideration, learned Sub Judge referred the question of tenancy to Land Tribunal under Section 125(3) of Kerala Land Reforms Act. Land Tribunal rendered a finding that defendants are not entitled to fixity of tenure. After receipt of the findings from Land Tribunal Exts.A1 and A2, Exts.B1 to B11 were marked. On the evidence learned Sub Judge held that the property originally belonged to Vava and he assigned it under Ext.A1 in favour of first defendant and plaintiff who are respectively children of Padmanabhan and Krishnan and therefore properties are available for partition. Accepting the findings it was found that defendants are not cultivating tenants. A preliminary decree was passed.

Appellants challenged the decree and judgment before District court, Alappuzha in A.S.78/99. Learned Additional District Judge on re-appreciation of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellants was heard.

4. Fact that property originally belonged to Vava is admitted by appellants. Fact that Padmanabhan and Krishnan are children of Vava is also admitted. Under Ext.A1 sale deed plaint schedule properties were assigned by Vava in favour of plaintiff and first defendant. Contention of defendants was that Vava did not have possession of the property at the time of Ext.A1 sale deed as he had granted a lease in favour of Padmanabhan under Ext.B10 on 19/2/1959. It is on that basis defendants contended that Padmanabhan had fixity of tenure and defendants claimed protection under Kerala Land Reforms Act.

5. Question of tenancy was referred to Land Tribunal. Land Tribunal on the evidence found that appellants are not entitled to fixity of tenure. As is

bound to trial court accepted the finding. Correctness of the findings of the Land Tribunal was considered by the first appellate court. After evaluating the evidence first appellate court upheld the findings of the Land Tribunal. Argument of learned counsel appearing for appellants was that learned District Judge did not properly consider Ext.B10 lease deed along with other evidence and ignored Exts.B3, B6 and B7 and if they were relied on the tenancy would have been upheld.

6. Specific case of defendants in the written statement was that lease was on 19/2/1959. There was no case that there was an earlier lease and it was renewed under Ext.B10. Instead the very case that lease originated on 19/2/1952. Though it was argued that learned District Judge did not consider Exts.B3, B6 and B7, Exts.B3 and B6 are tax receipts obtained on 2/3/1951 and 8/1/1953. Both receipts came into existence six years prior to the alleged lease under Ext.B10. It is also to be born in mind that property admittedly belonged to Vava father of Padmanabhan the lessee under Ext.B10. Even according to appellants Vava executed Ext.A1 sale deed whereunder the plaint schedule property allegedly

leased under Ext.B10, was assigned in favour of his grand children including the son of the alleged lessee under Ext.B10 on 28/4/1961. If there was a lease in favour of father of one of the assignees under Ext.A1 the property would not have been sold as if there was no lease. Even if, case of appellants is to be accepted, basic tax has to be paid by Vava till 1959. Exts.B3 and B6 tax receipts obtained much prior to 1959 cannot support the case of appellants that there was a lease in 1959. What remains is only Ext.B7. It is dated 28/7/1964. It was subsequent to Ext.A1 sale deed. Solitary payment of tax and that too in the name of father of one of the assignees under Ext.A1 sale cannot prove the alleged lease.

7. Learned District Judge elaborately considered the claim for tenancy raised by appellants. Appellants claiming lease hold right under Ext.B10. Ext.B10 is dated 19/2/1959. Ext.B10 shows that Padmanabhan was put in possession of the property by Vava in 1117 M.E. Even appellants have no such case in their written statement. What was contended was that lease originated only in 1959. There is no case that there was an oral lease in 1117 M.E before Ext.B10 lease. Learned District Judge

found that Vava got right over the property under Ext.B9 sale certificate only on 18/5/1118 M.E. Therefore there could not have been an oral lease in 1117 as stated in Ext.B10. Learned District Judge rightly found no reason to interfere with the findings of the courts below on the question of tenancy claimed by appellants. Plaintiff is therefore entitled to the decree concurrently granted by courts below. No substantial question of law is involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.No.355 OF 2002

6th March 2007

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